



Chapter 11 Bankruptcy

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Chapter 11 Bankruptcy

Chapter 11 bankruptcy is a reorganization. It is an orderly process that allows the debtor time and space to reorganize financial affairs and repay creditors some or all of the debt owed. It can also be used for liquidation.

Through Chapter 11, debtors can reject or cancel certain leases, contracts, and other debt obligations, and get breathing room to obtain new financing, sell property, or otherwise arrange to repay creditors.

Is Chapter 11 the right step for you?

My typical Chapter 11 client is a small to midsized, closely-held business with cash flow problems. The source of the problems varies; common problems include the decline of the housing market, growth and expansion at a fast pace, embezzlement by an employee, a change in ownership or leadership, or a balloon payment due to a bank that is unwilling to refinance.

Some of the company's debts may be personally guaranteed by the individual owner(s). These clients often want to discuss filing a personal bankruptcy in order to deal with their own debts, and also want to file a bankruptcy for their business in order to deal with the company's debts.

Compare Chapter 7, 11 and 13

Chapter 13 can be an alternative to Chapter 11 for reorganizing a small business that is a sole proprietorship or a mom and pop partnership. Both Chapter 11 and Chapter 13 are discussed in depth on my website. Chapter 13, if available, can be a godsend to small companies as it is far less complicated and expensive than Chapter 11.

“Compared to Chapter 7 cases, Chapter 11 cases are longer in duration, and more complex in terms of legal work.”

Whatever the reason for considering a court-supervised reorganization, the first step I take is working with you to determine whether a reorganization of the business would enable it to thrive, and whether the business can afford a Chapter 11 case. If the answer to both of these questions is “yes,” then I will prepare the Chapter 11 petition and schedules, and file them in the bankruptcy court.

Compared to Chapter 7 liquidation cases, Chapter 11 cases are longer in duration, and more complex in terms of legal work. The ultimate goal is to formulate and present a written plan for my Chapter 11 debtors to reorganize their affairs and

Chapter 11 is not as straightforward to explain as Chapter 7 or Chapter 13, so I designed this FAQ:

Q: How “big” does the owner’s business have to be to even consider Chapter 11?

A: I cannot quantify how big a debtor should be in a Chapter 11. I have filed Chapter 11 cases for a number of business entities and individuals over the years, so it’s more a question of assets (including revenue stream).

Liabilities can also come into play; there are unsecured and secured debt limits on eligibility to be a Chapter 13 debtor, so sometimes that must be factored in and may make a Chapter 11 case more appropriate.

Bottom line: everything is a very fact-specific, case-by-case analysis.

Q: How much does it cost to file a Chapter 11 case?

A: Chapter 11 cases are costly. The filing fee alone (what’s paid to the court at the time of filing) is \$1213. In addition, I handle Chapter 11 cases on an hourly basis, not as a fixed-fee, which is the case with most experienced Chapter 11 attorneys. It is impossible to predict at the time of filing how much time will be spent by the attorneys throughout the case, because there are so many variables. At a minimum, my attorney’s fees and expenses for a Chapter 11 are rarely less than \$20,000, and in some instances, are significantly higher.

Q: What usually disqualifies a business for consideration as a Chapter 11 case?

A: If the business has stopped operating, or has no assets, then there is no point in

attempting reorganization. I usually discourage single asset real estate debtors from Chapter 11 if they have been unable to secure (re)financing after giving it their all. Chapter 11 can do lots of things, but it can't raise capital or force financing that doesn't exist.

Q: Who shouldn't even bother asking for representation for Chapter 11?

A:

- People who aren't comfortable with transparency, because bankruptcy requires full disclosure of financial affairs.
- People who can't trust their attorneys, because I need free and full communication with my clients in order to represent them.
- People who can't listen, aren't open to new ideas and ways of doing business, and/or can't take advice – entrepreneurs, especially, tend to be risk-taking cowboys. If it works, great, but if Chapter 11 is on the table, then some things need to change.

Q: What other types of entities can consider Chapter 11 bankruptcy? Can non-profits file for Chapter 11 bankruptcy?

A: Corporations, LLCs, partnerships, individuals, and individuals doing business can all be a debtor under Chapter 11. This all includes both for profits and non-profits. Restaurants, retail businesses, golf courses, real estate developers, medical providers, consultants, churches, and manufacturers have been debtors in the Western District over the years, and none of them infrequently.

Q: What advice do you usually give to prospective clients when Chapter 11 isn't viable for them?

A: It depends on whether the financial problems are limited to the business, or spread to the owners; also it could depend on whether the entity wants to try to continue to stay in business or not.

repay their creditors according to the priorities of the Bankruptcy Code.

Collapsing the Company

“Collapsing the company” occurs when a closely-held corporate entity transfers its assets and liabilities to the owner, usually a husband and wife, and then the individual files for Chapter 13 and does business as sole proprietor. This strategy is appropriate only for small businesses, what I think of as mom and pop businesses.

The individual will need to do business as a sole proprietor for an appropriate period of time, and will need to be careful in documenting and otherwise handling the transfer.

To determine whether a client should “collapse the company” or restructure in Chapter 11 or Chapter 13, I ask about the assets and liabilities of the company, whether the business is currently operating (and if so to what extent), and what it would take for the company to (1) break even and (2) be profitable.

Sometimes, it is immediately obvious that the business simply needs to close, and the owners need to focus instead on their finances and find a new line of work.

“Collapsing the company” in Chapter 13 will not work where there are multiple owners or shareholders, or where the owner(s) personally have significant assets that they would lose in a personal bankruptcy case.

Rick Mitchell

My 30+ years as an attorney representing creditors, bankruptcy trustees, and debtors in consumer and business bankruptcy cases, gives clients a wealth of practical and legal knowledge to draw upon. In addition, the North Carolina State Bar has certified me as a specialist in consumer and business bankruptcy.

I welcome the opportunity to discuss your situation. Picking up the phone to make an appointment with me is the most difficult step in the process of finding a legal resolution to your financial difficulty.



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